IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

Crl.MC.No. 348 of 2007()

CC.73/2005 of JUDL. MAGISTRATE OF FIRST CLASS-V, KOZHIKODE

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PETITIONER:

P.K. RATNAKARAN,
S/O. BHASKARA PANICKER, VIDYA NIVAS,B.C.ROAD,
BEYPORE POST, KOZHIKODE DISTRICT.

BY ADV. SRI.P.S.SREEDHARAN PILLAI
SMT.C.G.PREETHA
SMT.P.RANI DIOTHIMA

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. V. BABU LIGIT, S/O. MAMMAN,
M.P. HOUSE, FAROOKE COLLEGE POST,KOZHIKODE DIST.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 15/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.348 of 2007

Dated this the 15th day of February, 2007

ORDER

The petitioner is the accused in a private complaint alleging commission of the offences punishable under Sections 420 and 406 I.P.C. The private complaint was filed after the police conducted an investigation and referred the same. The petitioner on receipt of summons had appeared before the learned Magistrate. He filed an application, a copy of which is produced as Annexure-III, with a prayer that he may be discharged under Section 245 Cr.P.C. The grievance of the petitioner is that Annexure-III application is not taken up for consideration by the learned Magistrate.

2. The learned counsel for the petitioner submits that charges have not been framed so far. The petitioner can, in these circumstances, under law, claim discharge under Section 245(2) Cr.P.C at any stage or 245(1) Cr.P.C after the enquiry under Section 244 Cr.P.C. The learned counsel for the petitioner submits that discharge has now been claimed under Section 245(2) Cr.P.C.

3. Needless to say that the learned Magistrate has to consider the prayer for discharge under Section 245(2) Cr.P.C. Cognizance is taken exparte without hearing the accused persons. After the accused persons enter appearance, they are certainly

entitled to submit before the Magistrate that cognizance taken is not justified and the allegations are groundless. If that be so, the petitioner can claim discharge under Section 245(2) Cr.P.C and the Magistrate is bound to consider such claim for discharge.

4. I do not think it necessary to insist on any specified time frame. But I must certainly observe that if Annexure-III has been filed as early as in October, 2005, the learned Magistrate must make every endeavour to consider the claim for discharge under Section 245(2) Cr.P.C as expeditiously as possible - at any rate, within a period of 60 days from the date on which a copy of this order is placed before the learned Magistrate. Personal appearance of the petitioner need not be unnecessarily insisted till a decision is taken on that question.

5. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-